

ILLINOIS POLLUTION CONTROL BOARD  
June 15, 2023

PAUL CHRISTIAN PRATAPAS, an	)	
individual,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 23-79
	)	(Citizens Enforcement - Water)
PULTE HOME COMPANY, LLC, a Michigan	)	
corporation, AND CITY OF BATAVIA,	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by B. F. Currie):

On December 15, 2022, Paul Christian Pratapas (Mr. Pratapas) filed a citizen’s complaint (Comp.) against Winding Creek by Pulte Homes (Pulte), and the City of Batavia (Batavia). The complaint concerns Pulte’s residential construction project located at the intersection of McKee Street and Deerpath Road in Batavia, Kane County.<sup>1</sup> On January 11, 2023, Pulte filed a motion requesting that the Board not accept the complaint for failure to properly serve the complaint on Pulte, as well as a motion to dismiss the action on the grounds that Mr. Pratapas alleges a wholly past violation (Pulte Mot.). On January 18, 2023, Batavia filed a motion to dismiss pursuant to 415 ILCS 5/31(d)(1) (2020) and 35 Ill. Adm. Code 101.202 (Batavia Mot.).

The Board first addresses the proper name of the respondent, then addresses the issue of service, and finally discusses the motions to dismiss from Pulte and Batavia. The Board directs the Clerk to correct respondent Pulte’s name, grants Pulte’s motion regarding service, allows Mr. Pratapas to attempt to perfect service, grants, in part, Batavia’s motion to dismiss the complaint on the grounds of failure to state a cause of action and frivolousness, and allows Mr. Pratapas to file an amended complaint.

**NAMED RESPONDENT**

As filed, Mr. Pratapas named “Winding Creek by Pulte Homes” as the respondent in this complaint. In its December 12, 2022, motion, the attorney for Pulte indicated that the proper name for the respondent is “Pulte Home Company, LLC”. The Board corrects the caption in this order and directs the Clerk to correct the respondent’s name in the docket of this case.

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<sup>1</sup> The complaint does not cite the specific address of the alleged violation. Rather it states that the violation happened at the intersection of McKee Street and Deerpath Road in Batavia. Comp. at 2

### **SERVICE OF COMPLAINT**

Under the Environmental Protection Act (Act) (415 ILCS 5 (2020)), any person may bring an action before the Board to enforce Illinois' environmental requirements. *See* 415 ILCS 5/3.315, 31(d)(1) (2020); 35 Ill. Adm. Code 103. Under the Board's rules, an enforcement proceeding begins by serving a notice and the complaint on a respondent. *See* 35 Ill. Adm. Code 103.204(a), (b). Specifically, service must be "by U.S. Mail with a recipient's signature recorded, a third-party commercial carrier with a recipient's signature recorded, or personal service." *Id.* Notably, enforcement complaints may not be served by e-mail. *See* 35 Ill. Adm. Code 101.1000(e).

If service is not timely initiated or completed, then the "proceeding is subject to dismissal, and the filing party is subject to sanctions." 35 Ill. Adm. Code 101.304(b)(4). In this case, Mr. Pratapas used a sample complaint form available from the Board's website that is directed at citizen complaints. The Board's form includes a sample affidavit of service that lists appropriate methods of service. Mr. Pratapas reported to the Board that the complaint would be served on the respondent by "[p]ersonal service and [Mr. Pratapas] will make the personal delivery. However, the affidavit of service is not available to [Mr. Pratapas] currently." Comp. at 10. For personal service, the form required the complainant to list the date, time, and address at which the complaint was provided. *Id.* These items were left blank by Mr. Pratapas in his filing, which lacked any other documentation demonstrating proof of service on Pulte. *Id.*

The Board grants Pulte's motion to not accept the complaint for failure to serve; however, the Board directs Mr. Pratapas to file the required proof of service of the complaint on the respondent no later than Monday, July 17, 2023, which is the first business day following the 30th day after the date of this order (*see* 35 Ill. Adm. Code 101.300(a)), or face dismissal of the complaint for failure to properly serve the complaint.

### **PULTE'S MOTION TO DISMISS**

The Board cannot accept a complaint without proper service on respondent. Therefore, because service was improper on Pulte, the Board will delay its ruling on Pulte's motion to dismiss until service is proper.

### **BATAVIA'S MOTION TO DISMISS**

The record includes an affidavit of service indicating that Mr. Pratapas personally delivered a copy of the complaint to "Laura for the City of Batavia" on December 20, 2022. Batavia does not challenge service.

Under 415 ILCS 5/31(d)(1) (2020), the Board can dismiss complaints that are frivolous. "Frivolous" is defined in the Board's rules as, "any request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief." 35 Ill. Adm. Code 101.202(b). In its motion to dismiss, Batavia argues that Mr. Pratapas requests relief which cannot be granted by the Board. In his complaint, Mr. Pratapas requests that the Board:

1. Find that Respondent violated the Act and its permits;
2. Assess a civil penalty of \$50,000 against Respondent for each violation of the Act and an additional civil penalty of \$10,000 for each day of each violation;
3. A Board order “prohibiting Andrea Podraza from acting as a gate keeper in her role with the NDPEs program because of her ego;”
4. A review of the site contractor certifications;
5. A Board order stating Pulte must follow the plans approved by the Board and adhering to rules for concrete washout;
6. A Board order requiring Pulte to provide access to the Stormwater Pollution Prevention Plan (SWPPP) book;
7. A Board order requiring Batavia to provide complainant with the “original approved SWPPP;”
8. A Board order voiding the permit for the site until all open enforcement cases are closed and changes made to Pulte’s operations. Comp. at 5-6.

Complaints must request relief that the Board has the ability to grant. *See* 35 Ill. Adm. Code 101.202(d). The Board has broad statutory authority to grant relief; however, it does not have the authority to prohibit employees of the City of Batavia from “gatekeeping”; to review site contractor certifications; nor can it order Batavia to provide the complainant with the original approved SWPPP. Therefore, the Board strikes relief requests numbered 3, 4, and 7 of the Complaint. *See* 35 Ill. Adm. Code 101.106(b).

Batavia also argues that the complaint is frivolous because it fails to state a cause of action as related to Batavia. Batavia Mot. at 3. The Board’s procedural rules require complaints to include “dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations.” 35 Ill. Adm. Code 103.204(c)(2). Mr. Pratapas’ complaint alleges that the violations occurred on December 13, 2022 at 11:13 p.m. at McKee Street and Deerpath Road in Batavia. Comp. at 2. However, the complaint lacks any details describing how respondent Batavia contributed to the extent, duration, or strength of the alleged violations. *Id.* Therefore, the Board grants, in part, Batavia’s motion to dismiss. However, the Board gives Mr. Pratapas 30 days to amend his complaint as to the specificity of the violations. The Board directs Mr. Pratapas to file an amended complaint by July 17, 2023.

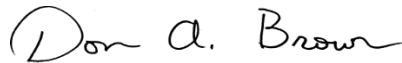
### **ORDER**

1. The Board directs the Clerk to correct the name of respondent Pulte in the docket.
2. The Board grants Pulte’s motion to not accept the complaint for failure to serve.
3. The Board directs Mr. Pratapas to file the required proof of service of the complaint on Pulte no later than Monday, July 17, 2023.
3. The Board grants, in part, Batavia’s motion to dismiss the complaint.

4. The Board strikes three of Mr. Pratapas's relief requests as related to Batavia, numbered 3, 4 and 7.
5. The Board directs Mr. Pratapas to file an amended complaint by July 17, 2023.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 15, 2023, by a vote of 3-0.

A handwritten signature in cursive script that reads "Don A. Brown".

Don A. Brown, Clerk  
Illinois Pollution Control Board